

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEC 3 1998

PATRICK FISHER
Clerk

JEANE MARIE WELCH,

Plaintiff-Appellee,

v.

CREDIT ADJUSTMENT COMPANY
INC., an Oklahoma corporation;
LISA GIFFORD; MORGAN
& ASSOCIATES, P.C.,

Defendants-Appellants.

No. 98-6077
(D.C. No. CIV-96-1509)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **BRORBY** , **BRISCOE** , and **LUCERO** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff brought an action against defendant pursuant to the Fair Debt Collection Practices Act (FDCPA), alleging violation of that Act and various other state laws. The district court granted summary judgment in favor of defendant on all claims.¹ Thereafter, defendant filed a motion seeking an award of attorney fees, which the district court denied. Defendant appeals the district court's order denying his motion for attorney fees.

The FDCPA provides for an award of attorney fees to a defendant upon a finding by the district court that the action was brought in bad faith or for the purpose of harassment. 15 U.S.C. § 1692k(a)(3). In this case, the district court found that plaintiff did not bring the action in bad faith and neither did plaintiff or her counsel act with the purpose of harassment. *See App.* at 307. We review the district court's denial of attorney fees for an abuse of discretion and its application of the legal principles underlying the denial de novo. *See Neustrom v. Union Pac. R.R.*, 156 F.3d 1057, 1067 (10th Cir. 1998). In the specific context of 15 U.S.C. § 1692k(a)(3), the review of the district court's finding on the issue of bad faith or harassment is for clear error. *See Swanson v. Southern Or. Credit Serv., Inc.*, 869 F.2d 1222, 1229 (9th Cir. 1989). The record shows that the district court's findings were not clearly erroneous, and, therefore, the district

¹ This court affirmed the district court's grant of summary judgment. *Welch v. Credit Adjustment Co.*, No. 97-6322, 1998 WL 670207 (10th Cir. Sept. 22, 1998) (unpublished).

court did not abuse its discretion in denying defendant's motion for attorney fees.

Therefore, we AFFIRM the order of the district court.

Entered for the Court

Wade Brorby
Circuit Judge